

Commission for Mental Health Developmental Disabilities and Substance Abuse Services

**Commission Meeting Minutes
November 13, 2001
Four Points Hotel, Raleigh, NC**

Commission Members Present

Pender McElroy, Martha Martinat, Judy Lewis, Martha Macon, Lois Batton, Dorothy Crawford, Pearl L. Finch, William Sims, Paul Gulley, Lou Adkins, Albert Fisher, Patricia Chamings, Ann Suggs, Bruce Whitaker, Floyd McCullouch, Jeanne Fenner, Fredrica Stell and Mansfield Elmore

Commission Members Absent

Emily Moore (excused), Donald Stedman (excused), George Jones (unexcused) and Raymond Reddrick (unexcused), Ken Gerrard (unexcused) , Joe Coulter (unexcused)

Commission Staff Present (DMH/DD/SAS)

Dr. Art Robarge, Acting Director for MH/DD/SAS
Tara Larson, Assistant Director for Quality Assurance and Management
Marilyn Brothers, Hearing Officer, DMH/DD/SAS
Jeff Horton, Division of Facility Services
Jill Newkirk, DMH/DD/SAS
Cindy Kornegay, DMH/DD/SAS
Susan Collins, DMH/DD/SAS

OTHERS PRESENT

Brenda Rubiano (Meck. AMH), Ann Schwindaman (NCCP), Robert Kurt (MHDDSAS), Mary Eldridge (DMHDDSAS), Rob Thornton (Murdoch Center), John Womble (DMHDDSAS), Doug Baker (DMHDDSAS), Marian Hartman (DMHDDSAS), Cynthia Temoshenko (GACPD), Beth Melcher (NAMI), Helen Wolstenholme (DMHDDSAS), Fred Waddle (NCCSPC), Carol D. Clayton (NC Council), Christine Heinburg (Carolina Legal Asst.), James Blackley (DMHDDSAS), Diane Pomper (AG's office), Flo Stein (DMHDDSAS), Bob Hedrick (NCCSP), Don Willis (DMHDDSAS), Susan Robinson (DMHDDSAS), Jim Jarrard (DMHDDSAS), Pat Porter (DMHDDSAS), Janice Allen (Citizen), Debbie Kinert (Consumer/Parent), Mary Green (Parent/DD Professional), Paula Bohland (Citizen), Dani Kinert (self-advocate), Robin Horrell (parent), Sarah Somers (Attorney NHLP), Sally Bober (citizen), Terry Miller (parent), Janell Albany (self-advocate), Evelyn B. Lucas (parent/advocate), Denise Mercado (Parent/Advocate), Dave Richard (NC-ARC), Patsy Christian (John Umstead)

Call to Order

Pender McElroy, Chairman of the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, called the meeting to order. Chairman McElroy read the "Reading of the Ethics Statement" and "Conflict of Interest".

Chairman McElroy acknowledged the excused absent members as follows: Emily Moore, due to daughter's surgery, and Donald Stedman is traveling out of state.

Chairman McElroy stated, "It's an honor, and I am humbled, to have been appointed Chairman of the Commission by Governor Easley. It is a great challenge, certainly, to do this job and I look forward to working with each member of the Commission and Commission staff. Emily Moore was a great help in this transition period."

Chairman McElroy on behalf of the commission members expressed appreciation to Emily Moore for her many years of service on the committee and her years as Chairman, and also to Mokie Stancil for his long years of service to the Commission. Mr. Stancil will remain active in mh/dd/sas but will not continue as a member of the Commission. Appreciation was expressed to Michelle Cotton for her meaningful updates in the area of mh/dd/sas. A motion was made by Martha Macon and seconded by Judy Lewis to offer the Commission's official appreciation to these members. This motion passed unanimously.

Procedural Matters

Dr. Paul Gulley has agreed to continue to chair the Advisory Committee. Floyd McCullouch will become Chairman of the Rules Committee. At the February meeting, a vice chair will be selected for the Commission.

Approval to Minutes

Upon motion of Judy Lewis, seconded by Martha Macon the Commission members unanimously approved the minutes of September 17-18, 2001.

Commission Committee Reports

Rules Committee

Chairman McElroy gave a report on the October 16, 2001 Rules Committee meeting. At this meeting, the Division staff made known to the Rules Committee that the Seclusion and Restraint Rules which were adopted at the September Commission meeting have been divided into three categories:

- 1) rules that did not have a fiscal impact – these rules have been forwarded to the Rules Review Commission (RRC) ;
- 2) rules that have minimal fiscal impact – these rules need to be filled in a temporary status in order to be in compliance with the Mental Health Reform Bill and have been so filed with the RRC;
- 3) rules that have significant fiscal impact – the Secretary has instructed the Division not to file these rules with the RRC pending signing the Fiscal Note, which the Secretary has under advisement.

Any rules adopted by either the DMH/DD/SA Committee or the DHHS Secretary must be filed with the RRC for approval. The role of the RRC is to approve all administrative rules and regulations issued by any state body or agency. The RRC does not look at the technical content of the rule. Its purpose is to review the rules and make sure they are consistent, understandable and enforceable.

Dr. Art Robarge and Tara Larson will give the fiscal impact in the three categories at the January 2002, Rules Committee meeting.

NAMI-NC has filed a petition for a declaratory ruling with the DHHS Secretary to implement the Seclusion and Restraint Rules, which were adopted on September 18, 2001 at the DMH/DD/SA Commission meeting. NAMI-NC is requesting the rules in category three above be filed with the RRC.

Policy Advisory Committee

Dr. Paul Gulley, Chairman of the Advisory Committee, reported on the Advisory Committee meeting on October 11, 2001. Minutes of that meeting were distributed. The Advisory committee members, along with other members of the Commission discussed the draft State Plan. Comments heard included the fact that some consumer groups were not notified of the Public Forum. Other comments pertained to what seemed to be a lot of duplication in the Coordination of Services, Availability of Services and Personnel in Rural areas, and cost of Services areas. Comments and suggestions were also made regarding the need to simplify the Consumer/Clients Rights/Ombudsman Process.

Rules Presentations

The following rules were presented to the Commission members for consideration:

- ❖ 45H.0205 – Controlled Substance, presented by Johnny Womble
 - ❖ 14V.3600 Outpatient Opioid, presented by Doug Baker
 - ❖ 14v.5600 Group Homes, presented by Marian Hartman
 - ❖ Therapeutic Homes for Individuals with SA and their Children, presented by Helen Wolstenholme
- Note: technical change on page one, line eighteen, states the facility **shall** utilize services from another facility providing treatment, support or medical services. It should read: “The facility **may** utilize services from another facility providing treatment, support or medical services.”
- ❖ Catchment Areas, presented by Tara Larson

Roanoke-Chowan Waiver Request

Marilyn Brothers presented the Roanoke-Chowan Waiver request. A copy of the waiver was distributed. The Roanoke-Chowan Human Services Center for MH/DD/SAS has requested a waiver of 10 NCAC 14V.0501(7) required services-Developmental Day Services for Preschool Children with, or at-risk for, developmental disabilities or delays or atypical development.

Division of Facility Services Report

Jeff Horton, Chief of Licensure with Division of Facility Services, reported on the UNC-Hospital issues. It was reported in the newspaper that UNC-Hospital was being terminated from the Medicaid/Medicare programs regarding an incident that happened at their inpatient psychiatric unit. Medicaid/Medicare is not mandatory participation for hospitals. Hospitals volunteer to participate in the Medicaid/Medicare program, and once the Division of Facility Services (DFS) certifies them to participate, then they are subject to oversight. DFS has an agreement with the Federal Government to do oversight-monitoring activities of the Medicare certified hospitals and also Rules and Regulations.

Regarding what generated DFS going to UNC-Hospital early in October 2001, DFS received a death report about a client who had eloped from the facility and committed suicide. DFS reviewed the facility on October 16th and exited on October 17, 2001. The patient was committed to the facility involuntarily. The DFS survey team cited issues with the identification system at UNC-Hospital, and DFS staff submitted a report stating non-observance of Federal regulations. The Center for Medicaid/Medicare Services (CMS) was notified in Atlanta and they felt this situation presented immediately jeopardy to patient health and safety. Any time there is an immediately jeopardy to patients health and safety a Medicare/Medicaid certified facility, termination actions are set. This is a twenty-three day termination action. On October 26th, CMS send out the termination letter to the facility basically telling them they will be terminated from the Medicaid/Medicare program on November 18th. CMS gave DFS authorization to revisit UNC-Hospital prior to November 18th. Every inpatient and outpatient services provided by the facility will be effected. When DFS revisits the facility and finds corrected actions the facility Medicaid/Medicare program will not be terminated.

Report from the Commission Members

Commission member Dorothy Crawford recommended that the Rules and Advisory Committees meet back to back. Staff will inform members of the 2002 dates.

Action on Rules/Waivers

The following actions were taken on Rules/Waivers:

- Martha Martanti moved approval of the Controlled Substance Schedule IV, with modifications as discussed. Floyd McCullouch seconded the motion, which was passed unanimously.
- Albert Fisher moved approval of the Outpatient Opioid Treatment 14V.3600 rules. Martha Macon seconded the motion, which passed unanimously.
- Dorothy Crawford moved approval of the 131D Group Homes to 122C rules. Jeanne Fenner seconded the motion, which passed unanimously.
- Judy Lewis moved approval of the Therapeutic Homes for Individuals with SA and their Children 14V.4100 with modification as discussed. Lois Batton seconded this motion, which passed unanimously.
- Judy Lewis moved approval of the Designation of Area Mental Health: Developmental Disabilities and Substance Abuse Authorities and Catchment Areas Rules. Floyd McCullouch seconded this motion, which passed unanimously.

- Martha Macon moved approval for the Roanoke-Chowan waiver request. Judy Lewis seconded the motion, which passed unanimously.

Division's Director Report

Acting Director Art Robarge updated the Commission on the status of the Division of MH/DD/SAS, and an overview of the Division was distributed. Dr. Robarge stated that the Division is committed to serve all clients in the communities and move resources in support of those initiatives.

Secretary's State Plan

Tara Larson updated the Commission on the State Plan promulgated by the Secretary of Health and Human Services. The Legislative Oversight Committee (LOC) has not met in several months due to the State Plan planning. The LOC will reconvene in January 2002. The State Plan will be delivered to the LOC on December 1st, as well as a listing of rules, statutes, etc. that are in conflict with each other and do not support the State Plan. For implementation of the State Plan, statutory changes will be needed in the short session. All monitoring and auditing will be reviewed throughout the session. Finance will be a big part of the first activity of the Legislative Oversight Committee. Dr. Alice P. Lin is no longer staff to the LOC, and Dr. Mary Fraizer has consumed that role/responsibility. The MGT report is available on the Division web site. The HSRI final report has not been finalized.

The State Plan Committee met monthly and provided information on the web and through focus groups. Public Hearings were held throughout the state. Tara reviewed the October 2001 State Plan mail-out to Commission members. There will be an annual review of the State Plan. The State Plan provides directions for the state for the next five to six years.

Chairman McElroy requested of Tara Larson that the role of the Commission be spelled out in more detail and with more clarity in the State Plan. He noted that the plan virtually ignores the role of the Commission, and that is inconsistent with the statutory and actual role of the Commission.

Public comments from Debbie Kinert, a parent and consumer in Mental Health, addressed the Commission members on the State Plan.

Further Comments from Commission Members

Commission member Floyd McCullough invited all members to attend the NC Council of Community Programs on December 10-12 in Pinehurst, NC. DHHS Secretary Carmen Hooker Buell is the keynote speaker on Tuesday, December 11, 2001.

November 14, 2001

All interested Commission members will tour the North Carolina Correctional Institution for Women.

Minutes prepared by Jill Newkirk, DMHDDSAS Staff
Minutes approved by Pender McElroy, Chairman